



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>

June 2, 2004

Ref: 8ENF-L

SENT VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Frank Augare, Registered Agent for
Trail's End Services
HC 72 Box 5005
Browning, MT 59417

Re: In the Matter of: Trail's End Services
Docket No. **CWA-08-2004-0042**
Administrative Complaint and Notice of Opportunity for Hearing

Dear Mr. Augare:

Enclosed is an Administrative Complaint and Notice of Opportunity for Hearing ("Complaint") filed by the U.S. Environmental Protection Agency ("EPA") against Trail's End Services, pursuant to its authority under section 311(b)(6)(B)(i) of the Clean Water Act (the "Act"), 33 U.S.C. § 1321(b)(6)(B)(i). EPA alleges in the Complaint that Trail's End Services' facility located at Highway 89 West, Browning, Montana, is in violation of the oil pollution prevention requirements set forth at 40 CFR part 112 and section 311(b)(6)(A) of the Act, 33 U.S.C. § 1321(b)(6)(A).

Specifically, the Complaint alleges that Trail's End Services failed to prepare and implement a Spill, Prevention, Control and Countermeasure ("SPCC") plan for its facility in writing and in accordance with 40 CFR §§ 112.7 and 112.8 as required by 40 CFR § 112.3. EPA discovered the violations during an unannounced SPCC inspection of the facility on September 12, 2003. The Complaint proposes a total penalty up to \$18,530.00 for the alleged violations.

You have the right to a hearing to contest the factual allegations in the Complaint. If you admit the allegations, or the allegations are found to be true after you have had an opportunity for a hearing, you have the right to contest the penalty proposed in the Complaint. A copy of EPA's administrative procedures is enclosed for your review. Please note the requirements for an



answer set forth in 40 CFR §§ 22.15 and 22.38. If you wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, you must file a written answer within thirty (30) days of receipt of the enclosed Complaint with the EPA Regional Hearing Clerk at the following address:

Ms. Tina Artemis, Regional Hearing Clerk (8RC)
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

If you fail to request a hearing, you will waive your right to formally contest any of the allegations set forth in the Complaint. If you fail to file a written answer or pay the proposed penalty within the time limits, a default judgement may be entered pursuant to 40 CFR § 22.17. This judgement may impose the penalty proposed in the Complaint.

Whether or not you request a hearing, you may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. You have the right to be represented by an attorney at any stage of the proceedings, including any informal discussions with EPA, but it is not required. A request for an informal conference does not extend the thirty (30) day period for filing your Answer and/or requesting a hearing.

If you have any questions, the most knowledgeable people on my staff regarding this matter are Brenda Morris and Donna Inman. Ms. Morris is in our Legal Enforcement Program and can be reached at (303) 312-6891. Ms. Inman is in our Technical Enforcement Program and can be reached at (303) 312-6201.

We urge your prompt attention to this matter.

Sincerely,

SIGNED

Elisabeth Evans
Technical Enforcement Director
Office of Enforcement, Compliance
and Environmental Justice

Enclosures: Complaint and Notice of Opportunity for Hearing
Consolidated Rules of Practice, 40 CFR Part 22
SBREFA Information Sheet
Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act, dated August, 1998.
EPA Supplemental Environmental Projects Policy, dated May 1, 1998

cc: Mr. Gerald Wagner
Director of Environmental Program
Blackfeet Tribe
P.O. Box 2029
Browning, MT 59417

Gwen Jacobs, 8P-TA
Barbara Burkland, 8MO

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

IN THE MATTER OF:)	Docket No. CWA-08-2004-0042
)	
Trail's End Services)	
HC 72 Box 5002)	ADMINISTRATIVE COMPLAINT AND
Browning, MT 59417)	OPPORTUNITY TO REQUEST HEARING
Respondent.)	
 Proceeding to Assess Class I Civil Penalty Under Section 311 of the Clean Water Act		

AUTHORITY

1. This is a civil administrative action issued under the authority vested in the Administrator of the Environmental Protection Agency ("EPA") by section 311(b)(6)(B)(i) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990. The Administrator has properly delegated this authority to the undersigned EPA officials. This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules") set forth at 40 CFR part 22, a copy of which is enclosed.

GENERAL ALLEGATIONS

2. Respondent is a corporation organized under the laws of Montana, and a "person" within the meaning of sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5).

3. The Respondent owns and operates a bulk fuel storage facility located at Highway 89 West, Browning, Montana ("facility"). The facility includes, but is not limited to, one 6,000 gallon diesel storage tank and one 2,000 gallon diesel storage tank, for a total oil storage capacity

of approximately 8,000 gallons.

4. Diesel is an oil within the meaning of “oil” as defined at § 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).

5. Respondent stores, transfers, distributes, uses or consumes oil or oil products at the facility.

6. Respondent is now, and was at the time of the inspection, an “owner and operator” of an “onshore facility” within the meaning of sections 311(a)(6) and (10) of the Act, 33 U.S.C. §§1321(a)(6) and (10).

7. The facility is a “non-transportation related” onshore facility within the meaning of 40 CFR § 112.2.

8. Spills from the facility can reach Willow Creek located approximately one-half of a mile north of the facility.

9. Willow Creek is a “navigable water” and “water of the United States” within the meaning of section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 CFR § 110.1.

10. Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil ... from vessels and from onshore and offshore facilities, and to contain such discharges"

11. EPA promulgated the oil pollution prevention regulations, set forth at 40 CFR part 112. 40 CFR § 112.1(b) states that the requirements of part 112 apply:

to owners or operators of non-transportation related onshore and offshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products, and which, due to their location, could reasonably be expected to discharge oil in harmful quantities,

as defined in part 110 of this chapter, into or upon the navigable waters of the United States or adjoining shorelines”

12. The facility is a non-transportation onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States (as defined by section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 CFR § 110.1) or its adjoining shoreline that may either (1) violate applicable water quality standards or (2) cause a film or sheen or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

13. The facility is subject to the oil pollution prevention requirements of 40 CFR part 112, pursuant to section 311(j) of the Act, 33 U.S.C. § 1321(j), and its implementing regulations.

14. 40 CFR § 112.3 requires that owners or operators of onshore and offshore facilities prepare a Spill Prevention, Control, and Countermeasure (“SPCC”) plan in writing, and in accordance with applicable sections of part 112, including, but not limited to, sections 112.7 and 112.8.

15. Section 311(b)(6)(A) of the Act, 33 U.S.C. § 1321(b)(6)(A), states in pertinent part that any owner, operator, or person in charge of any vessel, onshore facility or offshore facility (ii) who fails or refuses to comply with any regulation issued under subsection (j) of this section to which that owner, operator, or person in charge is subject, may be assessed a class I or class II civil penalty by ... the Administrator.

16. On or about September 12, 2003, EPA conducted an unannounced SPCC inspection ("the Inspection") of the facility.

17. At the time of the Inspection, the facility had a total fuel storage capacity of approximately 8,000 gallons.

18. The facility did not have a written SPCC plan at the time of the Inspection.

19. The following SPCC implementation measures were found to be deficient at the facility at the time of the Inspection:

- a. Failure to conduct inspections in accordance with written procedures and to maintain the written inspection records for three years (40 CFR §112.7(e));
- b. Failure to instruct personnel in spill prevention procedures (40 CFR §112.7(f)(1));
- c. Failure to provide secondary containment for the two diesel tanks totaling 8000 gallons (40 CFR §112.8(c));
- d. Failure to provide secondary containment for truck loading and unloading area (40 CFR §112.7(c)); and
- e. Failure to complete the “Certification of the Applicability of the Substantial Harm Criteria ” form (40 CFR §112.20(e)).

20. Respondent failed to prepare and implement an SPCC plan in writing and in accordance with the regulations at 40 CFR §§ 112.7 and 112.8 as required by 40 CFR §112.3.

21. Respondent’s failure to prepare and implement an SPCC plan in writing and in accordance with the regulations at 40 CFR §§ 112.7 and 112.8 from September 12, 2003, through and including May 31, 2004 (a duration of approximately 240 days) constitutes violations of 40 CFR §112.3 and sections 311(b)(6)(A), 33 U.S.C. § 1321(b)(6)(A), and 311(j)(1)(C), 33 U.S.C. § 1321(j)(1)(C) of the Act.

PROPOSED PENALTY

22. Based on the foregoing Allegations and pursuant to the authority of section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), Complainant proposes the assessment of

administrative penalties against the Respondent in the amount of \$18,530.00. Complainant proposes this penalty amount after considering the applicable statutory penalty factors in section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8): Respondent's alleged violations, the seriousness of the violations, the economic benefit to the violator resulting from the violations, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other factors as justice may require.

23. Specifically, the proposed penalty amount is based on major non-compliance due to Respondent's failure to prepare an SPCC plan and provide for secondary containment around the two diesel tanks and truck loading and unloading area. A moderate environmental impact was assessed because any drainage from the facility would have a significant impact on the Willow Creek, located approximately one-half of a mile north of the facility. Culpability was deemed to be significant given that SPCC regulation has been in existence since 1974, two work shops were conducted in Montana in August, 2003, and Respondent was given thirty days to come into compliance following the inspection and failed to do so. Additionally, the penalty was increased by one-half of one percent for each month the Respondent has failed to come into compliance. No additions were made to the proposed penalty amount based on either a history of violations or economic benefit.

TERMS OF PAYMENT FOR QUICK RESOLUTION

24. If Respondent does not contest the findings and penalty proposal set out above, this action may be resolved by paying the proposed penalty in full pursuant to 40 CFR § 22.18. If

such payment is made within 30 calendar days of receipt of this Complaint, no Answer need be filed. For more time for payment, Respondent may file a statement agreeing to pay the penalty within 30 days of receipt of the Complaint, then pay the money within 60 days of such receipt. Payment is to be made **by sending a cashier's or certified check payable to "Oil Spill Liability Trust Fund,"** with the docket number and name of the facility written on the check, to:

Donna Inman
Technical Enforcement Program (8ENF-UFO)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

Payment of the penalty in this manner does not relieve Respondent of its obligation to comply with the requirements of the statute and regulations. Payment of the penalty in this manner shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing on this matter.

OPPORTUNITY TO REQUEST A HEARING

25. As provided in the Act, a Respondent has the right to a public hearing to contest this Complaint. If you (1) contest the factual claims made in this Complaint; (2) contest the appropriateness of the proposed penalty; and/or (3) assert that you are entitled to judgment as a matter of law, you must file a written Answer in accordance with section 22.15 and 22.38 of the Consolidated Rules within 30 calendar days after receipt of this Complaint. Your Answer must (1) clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with regard to which you have knowledge; (2) state circumstances or arguments which are alleged to constitute grounds for defense; (3) state the facts you dispute; (4) the basis for opposing the proposed relief, and (5) specifically request an administrative hearing, if desired.

Failure to admit, deny, or explain any material factual allegation in this Complaint will constitute an admission of the allegation.

The Answer and one copy must be sent to:

Tina Artemis, Regional Hearing Clerk (8RC)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466

and a copy must be sent to the following attorney:

Brenda Morris, Enforcement Attorney (8ENF-L)
U.S. EPA Region 8, Legal Enforcement Program
999 18th Street, Suite 300
Denver, CO 80202-2466
Telephone: (303) 312-6891

IF YOU FAIL TO REQUEST A HEARING, YOU WILL WAIVE YOUR RIGHT TO FORMALLY CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT.

IF YOU FAIL TO FILE A WRITTEN ANSWER OR PAY THE PROPOSED PENALTY WITHIN THE 30 CALENDAR DAY TIME LIMIT, A DEFAULT JUDGMENT MAY BE ENTERED PURSUANT TO 40 CFR § 22.17. THIS JUDGMENT MAY IMPOSE THE PENALTY PROPOSED IN THE COMPLAINT.

SETTLEMENT CONFERENCE

26. The EPA encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations and is willing to explore this possibility in an informal settlement conference. If you or your attorney, if you choose to be represented by one, have any questions or wish to have an informal settlement conference with EPA, please call Brenda Morris at (303) 312-6891. Please note that a request for, scheduling of, or participation in a settlement conference does not extend the period for filing an

answer and request for hearing as set out above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in the Consolidated Rules. If a settlement can be reached, its terms must be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the Regional Judicial Officer.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8**
Complainant.

Date: 5/26/04

Michael T. Risner for/
Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Date: 5/28/04

SIGNED
Brenda Morris, Enforcement Attorney
U.S. EPA, Region 8
999 18th Street, Suite 300 (8ENF-L)
Denver, CO 80202-2466
Telephone: 303/312-6891
Facsimile: 303/312-6953

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING was hand-carried to the Regional Hearing Clerk, EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado, and that a true copy of the same was sent via certified mail to:

Mr. Frank Augare, Registered Agent for
Trail's End Services
HC 72 Box 5005
Browning, MT 59417

6/2/04
Date

SIGNED
Judith McTernan

IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE REGIONAL HEARING CLERK.

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON JUNE 2, 2004.